

§ 134.312

§ 134.312 Evidence.

To the extent the rules in this subpart permit the submission of evidence, the provisions of §134.223 (a) and (b) apply.

§ 134.313 Applicability of subpart B provisions.

Except where inconsistent with this subpart C, the provisions of subpart B of this part apply to appeals from size determinations and NAICS code designations.

[67 FR 47250, July 18, 2002]

§ 134.314 Standard of review.

The standard of review is whether the size determination or NAICS code designation was based on clear error of fact or law.

[61 FR 2683, Jan. 29, 1996, as amended at 67 FR 47250, July 18, 2002]

§ 134.315 The record.

Where relevant, the provisions of § 134.225 (a), (b), and (c) apply. In an appeal under this subpart, the contents of the record also include the case file or solicitation submitted to OHA in accordance with §134.306.

§ 134.316 The decision.

(a) *Contents.* Following closure of the record, the Judge will issue a decision containing findings of fact and conclusions of law, reasons for such findings and conclusions, and any relief ordered.

(b) *Finality.* The decision is the final decision of the SBA and becomes effective upon issuance. Where a size appeal is dismissed, the Area Office size determination remains in effect.

(c) *Service.* OHA will serve a copy of all written decisions on:

(1) Each party, or, if represented by counsel, on its counsel; and

(2) SBA's General Counsel, or his or her designee, if SBA is not a party.

(d) *Reconsideration.* The decision in a NAICS code appeal may not be reconsidered.

[61 FR 2683, Jan. 29, 1996, as amended at 67 FR 47250, July 18, 2002]

§ 134.317 Return of the case file.

Upon issuance of the decision, OHA will return the case file to the trans-

13 CFR Ch. I (1-1-03 Edition)

mitting Area Office. The remainder of the record will be retained by OHA.

[67 FR 47250, July 18, 2002]

Subpart D—Rules of Practice for Appeals Under the 8(a) Program

SOURCE: 63 FR 35766, June 30, 1998, unless otherwise noted.

§ 134.401 Scope of the rules in this subpart D.

The rules of practice in this subpart D apply to all appeals to OHA from:

(a) Denials of 8(a) BD program admission based solely on a negative finding(s) of social disadvantage, economic disadvantage, ownership or control pursuant to §124.206 of this title;

(b) Early graduation pursuant to §§124.302 and 124.304;

(c) Termination pursuant to §§124.303 and 124.304;

(d) Denials of requests to issue a waiver pursuant to §124.515; and

(e) Suspensions pursuant to §124.305(a).

§ 134.402 Appeal petition.

In addition to the requirements of §134.203, an appeal petition must state, with specific reference to the determination and the record supporting such determination, the reasons why the determination is alleged to be arbitrary, capricious or contrary to law. This section does not apply to suspension appeals. For suspensions, see §124.305 of this chapter.

[63 FR 35766, June 30, 1998, as amended at 67 FR 47250, July 18, 2002]

§ 134.403 Service of appeal petition.

(a) Concurrent with its filing with OHA, a concern must also serve SBA's AA/8(a)BD and the appropriate Associate General Counsel in SBA's Office of General Counsel with a copy of the petition, including attachments.

(1) For appeals relating to denials of program admission pursuant to §124.206 of this title, suspensions of program assistance pursuant to §124.305, or denials of requests for waivers pursuant to §124.515, a petitioner must serve the SBA's Associate General Counsel for Procurement Law.